

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

---

COMPLETE TITLE OF CASE:

STATE OF MISSOURI EX REL LACLEDE GAS COMPANY,

Respondent

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI.

Appellant

---

DOCKET NUMBER WD74852

DATE: December 11, 2012

---

Appeal From:

Circuit Court of Cole County, MO  
The Honorable Daniel Richard Green, Judge

---

Appellate Judges:

Division Four  
James Edward Welsh, C.J., Mark D. Pfeiffer, J., and Christine Carpenter, Sp. J.

---

Attorneys:

Shelley Brueggemann, Jefferson City, MO

Counsel for Appellant

---

Attorneys:

Michael Pendergast, St. Louis, MO  
Rick Zucker, St. Louis, MO  
Diana Carter, Jefferson City, MO  
Brian McCartney, Jefferson City, MO

Counsel for Respondent  
Co-Counsel for Respondent  
Co-Counsel for Respondent  
Co-Counsel for Respondent

---

**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**STATE OF MISSOURI EX REL LACLEDE GAS COMPANY,  
Respondent, v. PUBLIC SERVICE COMMISSION OF THE  
STATE OF MISSOURI, Appellant**

**WD74852**

**Cole County**

Before Division Four Judges: Welsh, C.J., Pfeiffer, J., and Carpenter, Sp. J.

This appeal involves a dispute over whether the Public Service Commission unlawfully and unreasonably issued two orders against Laclede Gas Company--one being a summary determination finding that Laclede violated a Stipulation and Agreement approved by the Commission in 2001 (the 2001 Agreement) by refusing to provide certain documents requested by the Commission's Staff and the other being a dismissal of Laclede's counterclaim against the Commission's Staff.

Laclede contends the Commission erred in issuing a summary determination because: (1) the Commission's order was unlawful in that genuine issues of material fact were in dispute, (2) the Commission's order was unlawful in that the Commission ruled against Laclede without affording Laclede a hearing as required by law, (3) the Commission's order was not supported by competent and substantial evidence and was arbitrary, capricious, and unreasonable in that the evidence did not support the Commission's findings regarding the 2001 Agreement and whether Laclede objected to the discovery request, (4) the Commission's order was arbitrary, capricious, and unreasonable and was an abuse of discretion in that the Commission found that Laclede violated the 2001 Agreement even though the Commission repeatedly stated that the Staff's discovery request was governed by the Rules of Civil Procedure and not by the 2001 Agreement, and (5) the Commission's order was unlawful in that the Commission violated the law of the case by requiring Laclede to produce information under terms that directly conflicted with a previous judgment from the circuit court. Finally, Laclede asserts the Commission's order dismissing Laclede's counterclaim for failing to state a claim upon which relief could be granted was unlawful in that Laclede pled facts that stated a claim for relief under Regulation 4 CSR 240-2.080(6).

**We, therefore, reverse the circuit court's judgment and affirm the decision of the Commission.**

**Division Four holds:**

(1) Summary determination was proper in this case because the pleadings and exhibits before the Commission showed that there were no genuine issues of material fact in dispute. Because the information requested by the Staff was requested in the context of prudency reviews of Laclede's actual cost adjustments, the plain language of Section IV.2 required production of the requested documents. Moreover, no genuine issue of material fact remained as to whether Laclede objected to providing the Staff with the LER information on the grounds that the information was not in Laclede's possession or control. The Commission's summary determination in this matter, therefore, was lawful and reasonable.

(2) The Commission was not required to hold a hearing. Therefore, the Commission's summary determination in this matter was lawful and reasonable.

(3) The Commission's order granting summary determination in favor of the Staff was supported by competent and substantial evidence and was not arbitrary, capricious, and unreasonable. The information requested by the Staff from Laclede was a discovery request made in the context of Laclede's actual cost adjustments cases (ACA) for 2005 and 200, and the evidence established that Laclede had objected to the Staff's discovery request on the grounds that the information was not in Laclede's possession or control.

(4) Just because the Commission previously stated that the Staff's discovery request was governed by the Rules of Civil Procedure and not by the 2001 Agreement but then decided that Laclede violated the 2001 Agreement does not render the Commission's decision arbitrary or unreasonable. The Commission's order granting summary determination in favor of the Staff, therefore, was not arbitrary, capricious, or unreasonable. The Commission is not bound by *stare decisis* based on prior administrative decisions.

(5) The circuit court's judgment in the mandamus action never considered the issue of whether or not Laclede's refusal to provide the discovery information requested by the Staff violated the Commission's 2001 Agreement. Because this issue was never decided by the circuit court, the circuit court's order that Laclede provide the discovery information only to the extent that it was in Laclede's possession, custody, or control is not the law of the case.

(6) Whether or not the Staff failed to comply with the Commission's affiliate transaction rules and with the CAM should be resolved in the ACA cases and not in an action seeking a determination of whether Laclede violated an agreement with the Commission by refusing to respond to discovery requests. Therefore, the Commission's order dismissing Laclede's counterclaim was lawful and reasonable.

Opinion by James Edward Welsh, Chief Judge

December 11, 2012

\* \* \* \* \*

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**